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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NO. ~~902 MISC.~~ ~~1195~~ 40

WILLIAM JOE JOHNSON,

Petitioner,

v.

HARRY S. AVERY, COMMISSIONER, DEPARTMENT OF CORRECTION, and C. MURRAY HENDERSON, WARDEN, TENNESSEE STATE PENITENTIARY, NASHVILLE, TENNESSEE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

GEORGE F. McCANLESS,
Attorney General & Reporter,
State of Tennessee,

THOMAS E. FOX,
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Attorneys for Respondents.

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CITATIONS

STATUTES

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OPINIONS BELOW.

The opinion of the District Court (App. B13 of Petition) is reported at 252 F.Supp. 783 (1966). The opinion of the United States Court of Appeals for the Sixth Circuit (App. B18 of Petition) is reported at 382 F.2d 353 (1967).

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED.

(1) Does the Tennessee prison regulation in question conflict with 28 U.S.C. § 2242?

(2) Does the enforcement of this regulation deny or unduly restrict reasonable access to the courts?

STATUTE AND REGULATION INVOLVED.

28 U.S.C. § 2242 is set forth in Appendix A of the petition. The challenged regulation is as follows:

> "No inmate will advise, assist or otherwise contract to aid another, either with or without a fee, to prepare Writs or other legal matters. It is not intended that an innocent man be punished. When a man believes he is unlawfully held or illegally convicted, he should prepare a brief or state his complaint in letter form and address it to his lawyer or a judge. A formal Writ is not necessary to receive a hearing. False charges or untrue complaints may be punished. Inmates are forbidden to set themselves up as practioners for the purpose of promoting a business of writing Writs." Guidance Manual for Prisoners, Sec. VI, page 7.

STATEMENT.

The petitioner, William Joe Johnson, is an inmate of the Tennessee State Penitentiary pursuant to a 1959 judgment of

conviction for the offense of rape. Respondent Harry S. Avery is the duly appointed and qualified Commissioner of Correction of the State of Tennessee in charge of all State penal institutions, reformatories and penitentiaries. Respondent C. Murray Henderson is the duly qualified Warden of the Tennessee State Penitentiary at Nashville.

At the outset, it must be noted that the petitioner is not complaining that he has been denied access to the courts. To the contrary, the petitioner has filed numerous petitions for writs of habeas corpus in his own behalf. See State ex rel. Johnson v. Heer, ___ Tenn. ___, 412 S.W.2d 218 (1966). His latest Federal habeas corpus petition was denied by the Honorable Robert L. Taylor, Chief Judge of the United States District Court for the Eastern District of Tennessee in the case of In Re Johnson, Civil No. 6097 (decided October 31, 1967). The Memorandum and Order entered in that case is attached hereto as respondents' Appendix A. More recently, the petitioner has filed a 42 U.S.C. § 1983 complaint in the United States District Court for the Middle District of Tennessee seeking damages in the amount of One Hundred Thousand ($100,000.00) Dollars. He contends that he has been damaged for the above amount due to the enforcement of the regulation being challenged in the instant case. Johnson v. Avery, Civil No. 4939 (filed December 18, 1967).

The petitioner, William Joe Johnson, frankly admits that he has repeatedly and knowingly violated the regulation in question and candidly states his intention to continue to do so. He holds

himself out as being an indispensable person to render legal assistance and service to fellow inmates who allegedly need his experience, wisdom and legal knowledge in the preparation of their petitions for writs of habeas corpu.

ARGUMENT.

I.

The District Court held that the regulation prohibiting any inmate from advising or assisting other prisoners in the preparation or filing of writs of habeas corpus or other legal papers conflicted with 28 U.S.C. § 2242 and was accordingly void. The Court below reversed:

> "We do not agree with the District Court that '/b/y preparing petitions for other prisoners, the petitioner is certainly acting in their behalf.' Neither the language nor the policy of 28 U.S.C. § 2242 justifies such a conclusion.
>
> "The provision of the law authorizing someone to act on behalf of a prisoner whose release is sought, relates only to the act of signing or verifying the petition, and we do not interpret that authorization to include the preparing of legal papers and serving as an attorney in violation of state law. In addition, the inability or incompetency to which this section is addressed is not the inability to draft legal papers as the District Court seems to hold. Most laymen lack that ability and it would hardly be necessary to include a special provision of law to authorize the employment of trained legal assistance in preparing papers. It seems clear that the situation to which this provision was meant to apply, is one where physical or mental handicaps prevent the prisoner from personally signing or verifying the petition, not one wherein lack of intelligence or legal training keep him from drafting his own papers." 382 F.2d at 357.

Respondents are not asking the Court to look to form or technical niceties regarding applications for habeas relief filed by prison inmates pro se. Tennessee has recently passed a Post Conviction Procedure Act in an effort to simplify the procedure and expedite the disposition of the literally hundreds of petitions which are being filed in this State. This Act is codified in T.C.A. 40-3801 through 40-3819 and same is attached hereto as respondents' Appendix B. All that is required is a simple statement of fact alleging a deprivation of a constitutional right. Legal citations are neither required nor desired.[1/] The petitioner does not contend that the prisoners he represents are incapable of signing or verifying their petitions due to physical or mental handicaps nor does he insist that these inmates, due to some defect, are wholly incapable of preparing their own petitions but rather alludes to his superior knowledge

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1/ 40-3807. Amendment of petitions not in prescribed form.--No petition for relief shall be dismissed for failure to follow the prescribed form or procedure until after the judge has given the petitioner reasonable opportunity, with the aid of counsel, to file an amended petition.

40-3815. Dismissal, withdrawal or amendment of petitions.--The court may grant leave to withdraw the petition at any time prior to the entry of the judgment, may freely allow amendments and shall require amendments needed to achieve substantial justice and a full and fair hearing of all available grounds for relief. The district attorney-general shall be allowed a reasonable time to respond to any amendments.

The court shall look to the substance rather than the form of the petition and no petition shall be dismissed for technical defects, incompleteness or lack of clarity until after the petitioner has had reasonable opportunity, with aid of counsel, to file amendments.

40-3821. Determination of indigency--Appointment of counsel and court reporters.--Indigency shall be determined and counsel, and court reporters appointed and reimbursed as now provided for criminal and habeas corpus cases by §§ 40-2014--40-2043.

and skill in preparing same, a self-imposed distinction which has proven to have little if any basis in fact. In other words, he simply claims that he is an expert in this field and is eminently qualified to represent fellow prisoners in their habeas applications.

Respondents respectfully submit that the Court below correctly held that neither the language nor the policy of 28 U.S.C. § 2242 authorizes the petitioner to set himself up as a "jail house lawyer" without restraint or reservation in the wholesale preparation of petitions for writs of habeas corpus for other inmates of the state penitentiary. Gusman v. Marrero, 180 U.S. 81 (1901); United States v. Houston, 273 F. 915 (2nd Cir. 1921); and Wilson v. Dixon, 256 F.2d 536 (9th Cir. 1958), cert. denied 358 U.S. 856.

II.

The fundamental right in issue here is that of reasonable access to the courts. A denial or undue restriction of this right is a denial of due process guaranteed to State prison inmates by the Fourteenth Amendment. White v. Ragen, 324 U.S. 760 (1945); Cochran v. Kansas, 316 U.S. 255 (1942); and Ex Parte Hull, 312 U.S. 546 (1941). A cursory examination of both the State and Federal dockets conclusively reveals that this right is not being impeded in Tennessee. Petitioner's allegations in this regard are general and conclusory, having no factual support.

Proper State officials have unquestionably been authorized to adopt, promulgate and enforce rules and regulations with reference to the internal management and discipline of prison inmates. The Court below noted "the well-established reluctance of the Federal Courts to intervene in internal affairs of State or Federal penal institutions . . . . unless it can be clearly demonstrated that they interfere with fundamental rights guaranteed by the Constitution." (Cases cited). 382 F.2d at 355. Respondents respectfully submit that the right to practice law[2/] or to maintain a legal office, school or department within the confines of the state penitentiary is not a right secured by the Constitution of the United States. Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961); cert. denied, 368 U.S. 862; Siegel v. Ragen, 180 F.2d 785 (7th Cir. 1950), cert. denied 339 U.S. 990; Roberts v. Peppersack, 256 F.Supp. 415 (D.C. Md. 1966); Ex Parte Wilson, 242 F.Supp. 537 (E.D.J.C. 1965); Edmundson v. Harris, 239 F.Supp. 359 (W.D. Mo. 1965); and Austin v. Harris, 226 F.Supp. 304 (W.D. Mo. 1964).

Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the consideration underlying our penal system.

2/ 29-302. Definition of practice and business.--The "practice of law" is defined to be and is the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies.

Price v. Johnson, 334 U.S. 266 (1948). Conversely, petitioner maintains that he has acquired, by virtue of his conviction and subsequent imprisonment, a constitutional right to practice law which he clearly would not have were he merely a private lay citizen.

> "In essence, then, the ruling of the District Court allows petitioner to engage in activity in the state prison which would constitute a crime if conducted outside the penitentiary. (There seems to be little question that petitioner, a convicted felon, could ever obtain a license to practice in state or Federal Courts even if he had the required legal education, which he does not have.)" 382 F.2d at 356.

All penal institutions attempt to avoid the development of inmate leaders. Once such leadership is established, the aggressive and strong inmates exploit and dominate the weaker prisoners. This is the exact situation we are faced with here. The objection to the petitioner's activities is based upon the disastrous effect it has on prison discipline and morale.

> "Yet in none of those cases did the Court indicate that these rights could be protected through representation by a layman. To the contrary, the Court has consistently emphasized that it is representation by trained counsel which is necessary to take advantage of the full scope of an accused's rights and shield him from unfair tactics or his own ignorance.
>
> "We agree with this approach to the problem of effectuating Constitutional rights both as to pre-trial events and post-conviction proceedings. Indeed, we believe that no favor is granted to the other prisoners by allowing them representation by one untrained in the complexities of post-conviction procedure and unrestrained by the values, ethics, and traditions

> of the bar. It takes little imagination to recognize possibilities of conflict of interest in allowing one who is a convicted murderer, rapist or burglar, serving a long sentence, to represent prisoners who have possible meritorious claims." 382 F.2d at 356, 357.

The staff of the Attorney General's Office is well familiar with Johnson petitions. The petitioner alleges substantially the same grounds in every petition, the allegations generally ranging in number from eight (8) to twelve (12); e.g., compare Dawson v. Henderson (Appendix C22 of petition) with In Re Johnson (Appendix A1 of Response). Respondents want it to be clear that the regulation in question was not adopted in an attempt to reduce the number of habeas petitions. Nor do the "Johnson allegations" present any additional or extra difficulty. To the contrary, petitioner's allegations have been litigated to such an extent that the great majority of them can be and are resolved as a matter of law.

It is therefore respectfully submitted that the Court below properly concluded as follows:

> "The problem of providing effective access to legal assistance at all stages of criminal justice, from pre-trial to post-conviction, certainly deserves the concern which the District Court showed in this case. However, its solution is more likely to be assured if it is attended to by the bench, bar, and law schools rather than left to the ad hoc procedures sanctioned in the District Court.
>
> "Reversed." 382 F.2d at 357.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the challenged prison regulation does not conflict with 28 U.S.C. § 2242 and that the enforcement of this regulation does not deny or unduly restrict reasonable access to the courts. It is accordingly submitted that this petition for writ of certiorari should be denied.

RESPECTFULLY SUBMITTED,

GEORGE F. McCANLESS,
Attorney General & Reporter,
State of Tennessee,

THOMAS E. FOX,
Deputy Attorney General,
State of Tennessee,

DAVID W. McMACKIN,
Assistant Attorney General,
State of Tennessee.

CERTIFICATE OF SERVICE.

I certify that I have mailed copies of the foregoing Brief for Respondents in Opposition to Pierce Winningham, III, Esq., Attorney at Law, Third National Bank Building, Nashville, Tennessee; Professor Carl P. Warden, Vanderbilt Law School, Nashville, Tennessee; and Professor Bruce E. Gagnon, Vanderbilt Law School, Nashville, Tennessee, by First Class Mail on this the 4th day of January, 1968.

David W. McMackin

DAVID W. McMACKIN,
Assistant Attorney General,
State of Tennessee.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

The original record was filed on
entered and docketed OCT 31 1967

IN RE:

WILLIAM JOE JOHNSON, CIVIL ACTION NO. 6097

Petitioner

MEMORANDUM AND ORDER

Before the Court for consideration is William Joe Johnson's motion for writ of habeas corpus.

A similar petition was before the Sixth Circuit Court of Appeals for Davidson County, Tennessee when an evidentiary hearing was held by Judge James M. Swiggart. The petition in that case recited that four previous petitions had been filed.

Following an evidentiary hearing in Nashville, the Court, after making findings of fact and conclusions of law with respect to each ground urged in support of the petition, dismissed it on the merits. The transcript of the testimony introduced at that hearing is made an exhibit to the answer in this case and has been carefully examined by the Court. The contentions made in that hearing are substantially the same as those made in the petition under consideration.

APPENDIX A

The first ground relied upon by petitioner as a basis for the writ is that he was arrested without a warrant. He testified that he did not see any warrant. The record was silent as to whether a warrant was issued. However, under Tennessee law, an arrest may be made without a warrant where a felony has been committed and there is reasonable cause for believing the person arrested to have committed it. TCA 40-803(3).

Petitioner was convicted in the State Court on a valid indictment returned by a grand jury and whether a warrant was issued by a sessions judge prior to his arrest would not be a violation of a constitutional right that would entitle him to relief in this case. McCord v. Henderson, Warden, C. A. 6, October 25, 1967.

The second ground is that petitione was interrogated by officials of Montgomery County following his arrest when his counsel was not present. It was not shown that petitioner made any admission at the time he was examined or that any evidence was used against him as a result of the interrogtion at his trial on the merits. It was not shown that he was deprived of any of his constitutional rights in this regard.

The decisions in Escobedo v. Illinois, 378 U. S. 478 (1964) and Miranda v. Arizona, 384 U. S. 436 (1966) would not apply to the present case. Johnson v. New Jersey, 384 U. S. 719 and Davis v. Kropp, 369 F. 2d 342.

The third ground is that defendant was denied due process because he was not furnished with a copy of the warrant charging him with the offense of rape or with a list of the persons summoned for the petit jury. He was represented by

three experienced and able attorneys but he does not charge that any request was made by them for these documents. Nor does he charge that he was not furnished with a copy of the indictment. The allegations under this ground are not sufficient under the circumstances shown in the record in this case to show a violation of a constitutional right.

The fourth ground is that petitioner was not confronted face to face with the accuser at the General Sessions Court hearing which bound him over for the action of the grand jury. The Tennessee constitution does not require a preliminary hearing. Dillard v. Bomar, 342 F. 2d 789 (C. A. 6); State ex rel Weston v. Henderson, Warden, 413 S. W. 2d 674. Tennessee law requires the committing magistrate to bind the accused to the grand jury when the grand jury is in session. No hearing is held unless the accused pleads guilty. TCA 40-402. Petitioner was confronted by witnesses at the preliminary hearing. This ground of the motion is without merit.

The fifth ground charges that the jury commissioners of Montgomery County intentionally and systematically excluded Negroes from the grand jury and petit jury which indicted and convicted him. The state trial judge found that this contention was not sustained by the proof. An examination shows that the findings of the state trial judge were supported by the record. Reams v. Davis, 333 F. 2d 430. There is no proof in the record that there was purposeful discrimination in the selection of jurors in Montgomery County. See Swain v. Alabama, 380 U. S. 202, 205.

The sixth ground asserts that petitioner was convicted pursuant to an invalid statute on the ground that the Legislatur that passed it was improperly apportioned. This question was

decided adversely to the contention of petitioner in the cases of Dawson v. Bomar, 322 F. 2d 445 and Horton v. Bomar, 335 F. 2d 583.

Petitioner also contends that the corpus delicti was not established. This involves a question of the evidence that was introduced in the trial on the merits. Habeas corpus is not the proper procedure to raise a question of evidence. Gemmel v. Buchkoe, 358 F. 2d 338 (C. A. 6).

The seventh ground is that petitioner was deprived of his right of appeal. Petitioner, as previously indicated, was represented by attorneys Hollinsworth, Looby and Williams. The record shows that these are qualified and experienced attorneys, two of them, Looby and Williams, have appeared in this Court and are recognized by this Court as experienced attorneys. Mr. Looby testified at the evidentiary hearing. He stated that he was privately employed and that he and his colleagues used their sound discretion in not appealing. Failure to appeal by private attorneys is not chargeable to the State as held by the State Supreme Court, State v. Heer, 412 S.W.2d 218, and as has been held by our Sixth Circuit Court of Appeals under the Fourteenth Amendment. The Supreme Court of Tennessee quoted the following language from a decision of the Sixth Circuit in the case of Davis v. Bomar, 344 F. 2d 84, as follows:

> "When counsel is retained by a defendant to represent him in a criminal case he acts in no sense as an officer of the state. For while he is an officer of the court his allegiance is to his client whose interests are ordinarily diametrically opposed to those of the state. It necessarily follows that any lack of skill or incompetence of counsel must in these circumstances be imputed to the defendant who employed him rather than to the state, the acts of counsel thus becoming those of his client and as such are recognized and accepted by the court unless the defendant repudiates them by making known to the court at the time his objection to or lack of concurrence in them. A defendant cannot seemingly acquiesce in his counsel's defense of him or his lack of it and, after the trial has

resulted adversely, have the judgment set aside because of the alleged incompetency, negligence or lack of skill of that counsel."

p. 220

The Court concludes that petitioner's failure to appeal does not entitle him to a writ of habeas corpus.

The eighth and final ground is that petitioner's constitutional rights were violated because Judge Spencer was not commissioned by the Governor pursuant to Section 17-222 T.C.A. This contention is without merit since state judges may interchange with each other by virtue of Section 17-207 T.C.A. Judge Spencer presided over the case at the request of Judge Hudson who was ill.

Having carefully considered petitioner's petition for writ of habeas corpus and each ground urged in its support and being of the opinion that it is lacking in merit, it is, therefore, ORDERED that the petition be, and same hereby is, denied.

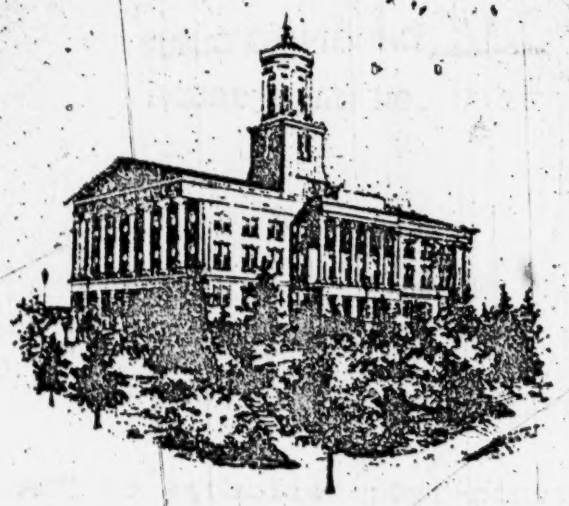
See: Barker v. Ohio, 330 F. 2d 594; Crockett v. Haskins, 372 F. 2d 475.

Enter:

ROBT. L. TAYLOR

United States District Judge

APPENDIX B



Department of State

To all to whom these Presents shall come, Greeting:

I **Joe C. Carr** . *Secretary of State of the State of Tennessee, do hereby certify that the annexed is a true copy of*

House Bill No. 717

Chapter No. 310

Public Acts of 1967

the original of which is now on file and a matter of record in this office.

In Testimony Whereof. *I have hereunto subscribed my Official Signature and by order of the Governor affixed the Great Seal of the State of Tennessee at the Department in the City of Nashville, this* 29th *day of* May *A.D. 19*67.

THE GREAT SEAL OF THE STATE OF TENNESSEE · XVI · AGRICULTURE COMMERCE · 1796 ·

Secretary of State

APPENDIX B

PUBLIC CHAPTER NO. 316

HOUSE BILL NO. 717

By

Galbreath

AN ACT to establish post-conviction procedures and remedies, including proceedings for delayed appeal, in the nature of a writ of error in courts of this State for persons claiming a right to relief under the Constitution or laws of Tennessee or of the United States, and to repeal Sections 23-1840 through 23-1848 of the Code.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. A prisoner in custody under sentence of a court of this State may petition for post-conviction relief under this Act at any time after he has exhausted his appellate remedies or his time for appeal in the nature of a writ of error has passed and before the sentence has expired or has been fully satisfied.

SECTION 2. To begin proceedings under this Act, the petitioner shall file a written petition with the clerk of the court where the conviction occurred naming the State

SECTION 3. The petition shall briefly and clearly state:

1. Petitioner's full name and address;

2. The indictment number, if known, and the offenses for which the sentence was pronounced;

3. The name and location of the court which pronounced the sentence;

4. The date the sentence was pronounced;

5. The terms of the sentence;

6. What restraint of liberty is presently being imposed;

7. Who is imposing the present restraint, and when it commenced;

8. Any appeals and all other applications for relief previously filed including the date decided, the court, the grounds asserted and the result;

9. The names of the lawyers who have represented the petitioner and at what stage of the proceedings;

10. Facts establishing the grounds on which the claim for relief is based, whether they have been previously presented to any court and, if not, why not. If no prior petition under this Act has been filed, the petition shall set forth each of the individual grounds, if any, required by the rules of the Supreme Court;

Supreme Court.

The petition shall have attached affidavits, records or other evidence supporting its allegations or shall state why they are not attached.

SECTION 4. Relief under this Act shall be granted when the conviction or sentence is void or voidable because of the abridgement in any way of any right guaranteed by the Constitution of this State or the Constitution of the United States, including a right that was not recognized as existing at the time of the trial if either Constitution requires retrospective application of that right.

SECTION 5. When the clerk of the trial court receives any petition applying for relief under this Act, he shall forthwith:

(1) make three copies of the petition,

(2) docket and file the original petition and its attachments,

(3) mail one copy of the petition to the Attorney General and Reporter, Supreme Court Building, Nashville,

(4) mail or forward one copy of the petition to the District Attorney General,

(5) mail or forward one copy to petitioner's attorney, and

(6) notify the judge.

reasonable opportunity, with the aid of counsel, to file an amended petition.

SECTION 7. A petition for habeas corpus may be treated as a petition under this Act when the relief and procedure authorized by this Act appear adequate and appropriate, notwithstanding anything to the contrary in Title 23, Chapter 18 of the Code, or any other statute.

SECTION 8. When the petition has been competently drafted and all pleadings, files and records of the case which are before the court conclusively show that the petitioner is entitled to no relief the court may order the petition dismissed.

In all other cases the court shall grant a hearing as soon as practicable. The trial court shall issue such interlocutory orders, including a stay of execution, as may be required.

Where the petitioner is under the death sentence, the judge of any court of record with criminal jurisdiction in the county where the prisoner is confined or the justice of any appellate court may for good cause stay execution pending the filing of the petition with the trial judge and his interlocutory action thereon.

his petition raises substantial questions of fact as to events in which he participated, he shall appear and testify.

If the petitioner is imprisoned, the warden shall arrange for transportation of the petitioner to and from the court upon proper orders issued by the trial judge. The sheriff of the county where the proceeding is pending shall have the authority to receive and transport the petitioner to and from the penitentiary and the court, if the court so orders or if for any reason the warden is unable to transport him. The sheriff shall be entitled to the same costs allowed for the transportation of prisoners as is provided in criminal cases upon the presentation of the account certified by the judge and District Attorney General.

SECTION 10. The scope of the hearing shall extend to all grounds the petitioner may have, except those grounds which the court finds should be excluded because they have been previously determined, as herein defined.

SECTION 11. A ground for relief is "previously determined" if a court of competent jurisdiction has ruled on the merits after a full and fair hearing.

judge is empowered to issue an order directed to the clerk of any court in Tennessee to furnish without cost to the petitioner certified copies of such documents or parts of the record on file in his office as may be required.

SECTION 13. The District Attorney General shall represent the state and respond by proper pleading on behalf of the State within thirty (30) days after receiving notice of the docketing or within such time as the court orders. If the petition does not include the records or transcripts, or parts of records or transcripts that are material to the questions raised therein, the District Attorney General is empowered to obtain them at the expense of the state and shall file them with the responsive pleading or within a reasonable time thereafter. The District Attorney General shall be reimbursed for any expenses including travel incurred in connection with the preparation and trial of any proceeding under this Act. This expense shall be paid by the State of Tennessee, and shall not be included in the expense allowance now received by the various District Attorneys General.

It shall be the duty and function of the State Attorney General and his staff to lend whatever assistance may be necessary to the District Attorney General in the trial and disposition of such cases. In the event an appeal is taken

represent the state and prepare and file all necessary briefs in the same manner as now performed in connection with criminal appeals.

SECTION 14. The court may grant leave to withdraw the petition at any time prior to the entry of the judgment, may freely allow amendments and shall require amendments needed to achieve substantial justice and a full and fair hearing of all available grounds for relief. The District Attorney General shall be allowed a reasonable time to respond to any amendments.

The court shall look to the substance rather than the form of the petition and no petition shall be dismissed for technical defects, incompleteness or lack of clarity until after the petitioner has had reasonable opportunity, with aid of counsel, to file amendments.

SECTION 15. All evidentiary hearings shall be recorded.

SECTION 16. Evidence may be taken orally or by deposition, or in the discretion of the judge by affidavit. If affidavits are admitted, any party shall have the right to propound written interrogatories to the affiants or to file answering affidavits.

SECTION 17. If the court finds that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable, the court shall vacate and set aside the judgment or order a delayed appeal as hereinafter provided and shall enter an appropriate order and any supplementary orders that may be necessary and proper. Costs shall be taxed as in criminal cases.

Upon the final disposition of every petition, the court shall enter a final order, and except where proceedings for delayed appeal are allowed, shall set forth in the order or a written memorandum of the case all grounds presented and shall state the findings of fact and conclusions of law with regard to each such ground.

Where the petitioner has court-appointed counsel, the court may require petitioner's counsel to file a verified statement of dates and times he has consulted with petitioner and this statement shall become a part of the record.

SECTION 18. The clerk of the court shall send a copy of the final judgment to the petitioner, the petitioner's counsel of record, any authority imposing restraint on the petitioner and the Attorney General and Reporter at Nashville.

SECTION 19. When the trial judge conducting a hearing pursuant to this Act finds that the petitioner was denied his right to an appeal in the nature of a writ of error from his original conviction in violation of the Constitution of the United States or the Constitution of the State of Tennessee and that there is an adequate record of the original trial proceeding available for such review, the judge can:

(1) If a bill of exceptions was filed, grant a delayed appeal in the nature of a writ of error.

(2) If, in the original proceedings, a motion for a new trial was filed and overruled but no bill of exceptions was filed, authorize the filing of the bill of exceptions in the convicting court and the order authorizing the filing shall be deemed to be the order or action of the court which occasioned the filing of said bill of exceptions as authorized by Section 27-111 of the Code.

(3) If no motion for a new trial was filed in the original proceeding, authorize such motion to be made before the original trial court within thirty (30) days. Such motion shall be disposed of by the original trial court as if the motion had been filed under authority of Section 27-201 of the Code.

Any bill of exceptions filed pursuant to this Section may be approved by the judge of the court wherein the petitioner was convicted irrespective of whether such judge presided over the case at the time of the original trial.

An order granting proceedings for a delayed appeal shall be deemed a final judgment for purposes of the review provided by Section 21. If either party does appeal, the time limits provided in this Section shall be computed from the date the clerk of the trial court receives the order of the appellate court determining the appeal.

The judge of the court which sentenced a prisoner who has sought and obtained relief from that sentence by any procedure in a federal court is likewise empowered to grant the relief provided in this Section.

SECTION 20. Indigency shall be determined and counsel and court reporters appointed and reimbursed as now provided for criminal and habeas corpus cases by Sections 40-2014 through 40-2043 of the Code.

SECTION 21. The order granting or denying relief under the provisions of this Act shall be deemed a final judgment, and an appeal may be taken to the Court of Criminal Appeals by simple appeal. A motion for a new trial shall not be required for such appeal.

SECTION 22. The Supreme Court may promulgate rules of practice and procedure consistent with this Act, including rules prescribing the form and contents of the petition, the preparation and filing of the record and assignments of error for simple appeal and for delayed appeal in the nature of a writ of error and may make petition forms available for use by petitioners.

SECTION 23. When a new trial or delayed appeal in the nature of a writ of error is granted, release on bail shall be discretionary with the trial judge pending further proceedings. In all other cases the petitioner shall not be entitled to bail.

SECTION 24. The provisions of this Act shall not affect any petition or case now pending in any court which may have been authorized by the provisions of Section 23-1801 through 23-1848 of the Code.

SECTION 25. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

SECTION 26. Sections 23-1840 through 23-1848 of the Code are hereby repealed as of the effective date of this Act except as provided herein.

SECTION 27. This Act may be referred to as the "Post-Conviction Procedure Act."

SECTION 28. This Act shall take effect from and after July 1, 1967, the public welfare requiring it.

PASSED: May 25, 1967

SPEAKER OF THE HOUSE OF REPRESENTATIVES

SPEAKER OF THE SENATE

APPROVED:
5/26/67

GOVERNOR